

DEPARTMENT OF STATE REVENUE

04-20210003.ODR

Final Order Denying Refund Number: 04-20210003
Sales Tax
For the Tax Year 2017, 2018, 2019

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this final determination.

HOLDING

Indiana Business was not entitled to the refund because it failed to demonstrate that (1) it paid the tax on the pallet rentals and (2) its use of pallets in question qualified for the agricultural exemption.

ISSUE

I. Sales Tax - Refund.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-4-1; IC § 6-2.5-5-2; IC § 6-2.5-5-9; IC § 6-8.1-9-1; *Indiana Dep't of State Revenue v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *Graham Creek Farms v. Indiana Dept. of State Revenue*, 819 N.E.2d 151 (Ind. Tax Ct. 2004); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Brambles Industries, Inc., d/b/a Chep USA v. Ind. Dept. of Revenue*, 892 N.E.2d 1287 (Ind. Tax Ct. 2008); [45 IAC 2.2-3-4](#); [45 IAC 2.2-3-14](#); [45 IAC 2.2-5-3](#); [45 IAC 2.2-5-6](#); [45 IAC 2.2-5-8](#); [45 IAC 2.2-5-9](#); [45 IAC 2.2-5-10](#).

Taxpayer protests the refund denial, claiming that its use of pallets was exempted under IC § 6-2.5-5-2.

STATEMENT OF FACTS

Taxpayer operates a farm in Indiana. In September 2020, Taxpayer filed three GA-110L forms, requesting an approximately \$19,000 refund of sales tax paid on pallet rentals during 2017, 2018, and 2019.

The Indiana Department of Revenue ("Department") reviewed and denied Taxpayer's refund request. In its October 5, 2020 letter, the Department explained that "[t]he pallets are considered to be returnable containers. Returnable containers are not exempt."

Taxpayer protested the refund denial. A hearing was held. This Final Order Denying Refund ensues. Additional facts will be provided, as necessary.

I. Sales Tax - Refund.

DISCUSSION

The Department determined that Taxpayer was not entitled to a refund of tax paid because the pallets in question were returnable containers subject to sales tax. Taxpayer stated that it was not seeking the refund pursuant to IC § 6-2.5-5-9. Rather, Taxpayer contended that (1) to facilitate its farming operation, it regularly rents or leases certain shipping pallets from an out-of-state vendor, who collects tax on the transactions, and (2) its use of pallets qualified for the exemption under IC § 6-2.5-5-2. Thus, the issue is whether Taxpayer demonstrated that it was entitled to the refund of tax.

In general, if a taxpayer believes that it has overpaid the tax, the taxpayer is required to timely file a claim for a refund with the Department. Specifically, IC § 6-8.1-9-1(a), in relevant part, states:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. Except as provided in subsections (j) and (k), in order to obtain the refund, the person must file the claim with the department within three (3) years after the later of the following:

- (1) The due date of the return.
- (2) The date of payment.

For purposes of this section, the due date for a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax is the end of the calendar year which contains the taxable period for which the return is filed. The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund. **(Emphasis added).**

IC § 6-2.5-2-1(a) imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-4-1 provides that a retail transaction occurs when a seller "acquires tangible personal property for the purpose of resale; and . . . transfers that property to another for consideration." IC § 6-2.5-4-1(b). In addition, the Indiana use tax is imposed "on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is generally functionally equivalent to the sales tax. See *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

Accordingly, all purchases of tangible personal property are taxable unless specifically exempted under Indiana law. [45 IAC 2.2-5-3\(b\)](#); [45 IAC 2.2-5-6\(a\)](#); [45 IAC 2.2-5-8\(a\)](#); [45 IAC 2.2-5-9\(a\)](#); [45 IAC 2.2-5-10\(a\)](#). An exemption from the use tax is granted for transactions where the sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4 and [45 IAC 2.2-3-4](#). There are various tax exemptions available outlined in [IC 6-2.5-5](#) which are applicable to both sales tax and use tax. [45 IAC 2.2-3-14\(2\)](#). A statute which provides a tax exemption, however, is strictly construed against the taxpayer. *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id.* at 101 (internal citations omitted). In applying any tax exemption, the general rule is that tax exemptions from sales and use tax would be strictly construed against taxpayer challenging denial of claim for refund regarding sales and use tax. *Graham Creek Farms v. Indiana Dept. of State Revenue*, 819 N.E.2d 151, 155 (Ind. Tax Ct. 2004). Thus, in order for Taxpayer to prevail on the issue it raised in its claim for a refund of sales or use tax, Taxpayer is required to provide documentation explaining and supporting its challenge. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

In this instance, Taxpayer contended that it was entitled to the refund of sales tax on the pallet rentals because it used pallets "in the production of asparagus, cantaloupe, and watermelon." Thus, Taxpayer argued that its use of pallets qualified for the exemption under IC § 6-2.5-5-2, which provides:

- (a) Transactions involving agricultural machinery, tools, and equipment, including material handling equipment purchased for the purpose of transporting materials into activities described in this subsection **from an onsite location**, are exempt from the state gross retail tax if the person acquiring that property acquires it for the person's **direct use in the direct production**, extraction, harvesting, or **processing of agricultural commodities**.
- (b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:
 - (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
 - (2) the person acquiring the property is occupationally engaged in the production of food or commodities which the person sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
 - (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.
- (c) Transactions involving agricultural machinery or equipment, including material handling equipment purchased for the purpose of transporting materials into activities described in this subsection **from an onsite location**, are exempt from the state gross retail tax if the person acquiring the property:
 - (1) acquires it for the person's direct use in:
 - (A) the direct application of fertilizers, pesticides, fungicides, seeds, and other tangible personal property; or
 - (B) the direct extraction, harvesting, or processing of agricultural commodities; for consideration; and
 - (2) is occupationally engaged in providing the services described in subdivision (1) on property that is:
 - (A) owned or rented by another person occupationally engaged in agricultural production; and
 - (B) used for agricultural production.

(Emphasis added).

In addition, Taxpayer explained its operation, in relevant part:

So each crop is field run coming to packing shed from the field. Field run product is a mixture of quality, sizes, maturity, etc. In order to sell the product to retailers and wholesalers, it must be packaged according to industry and USDA standards. Upon product arrival at buyers['] warehouse, [i]f not properly packaged to certain specification, the produce will be rejected and returned to shipper.

In order to sell [] the crops need precooled as quickly as possible after harvest. This cooling helps preserve initial quality and helps prolong shelf life. Both [crop] have industry standards that these crops must be cooled [too]. If the temperatures are not correct when product is received at buyers['] warehouse, these shipments will be rejected and returned to shipper. . . .

[These crops] have USDA and industry standards sizes and quality specifications. Specifications include but not limited to quality, temperature, size and [PLU] stickers. So the field run crops must be separated and packaged according to these specifications. One of the important specifications is the size. . . . Certain buyers like different sizes and packaging. . . . Also, all these products require stickers with product specific bar codes, [PLU] numbers, and country of origin labels. Then there is the trace back issue. Each bin or pallet of produce must have a traceback sticker on it providing grower and product information. . . . So, the packaging of these products require[s] that they be placed on a pallet for shipment to buyers['] facilities then on to the stores.

. . .

[Crop] procedure.

[Crops] are hand harvested and placed loose on to wagons then transported to the packing house. The packing house will separate the field run [crops] according to size, ripeness, quality, etc. Each [crop] must have a sticker applied with country of origin and product specific unique PLU code. Each size will be placed into its unique bin or carton. The bins and cartons are placed on a pallet and a required traceback sticker applied. When the pallet is full, a forklift will move the pallets to a forced air pre cooler to remove the field heat as quickly as possible. When the pallets of [crops] have reached required temperature, forklifts move the pallets to the cooler for storage until shipped. The different pallet sizes and packaging must be kept [separate] because they will be shipped to different buyers. When it is time to ship the pallets a forklift loads the pallets onto a refrigerated trailer. At buyers['] warehouse, forklifts will unload the pallets of [crops].

Taxpayer further provided photos, invoices, and an advisory letter from the Department addressing a similar issue concerning its affiliate company.

Upon review, however, the Department is not able to agree that Taxpayer here was entitled to the refund. First, Taxpayer's supporting documentation, such as invoices, demonstrated that, it was not Taxpayer which rented or leased the pallets in question. Specifically, Taxpayer's invoices for 2017 demonstrated that it was a separate company located in Michigan which ordered the pallets and the out-of-state vendor collected tax on transactions from that company located in Michigan. In other words, Taxpayer's supporting documentation failed to establish that it was an Indiana Taxpayer which entered the retail transactions, renting the pallets from the out-of-state vendor, and the out-of-state vendor collected tax from Taxpayer and remitted tax to Indiana on the pallet rentals in question. Similarly, for 2018 and 2019, the invoices also did not establish the fact that it was Taxpayer that rented and paid for the pallets in question. Therefore, pursuant to IC § 6-8.1-9-1(a), in the absence of other supporting documentation to substantiate that Taxpayer paid the tax, the Department is not able to agree that Taxpayer was entitled to the refund.

Even if, for the purposes of argument, assuming that Taxpayer was able to establish it rented, used, and paid tax on the pallet rentals, Taxpayer's reliance of IC § 6-2.5-5-2 is misplaced. Taxpayer's documentation demonstrated that the crops from the field were first placed onto a conveyor and underwent a sorting and cleansing process. Taxpayer's employees manually picked up the crops from the conveyor belt and placed them into separate bins. Those bins were placed on top of the pallets in question. Taxpayer's supporting documentation demonstrated that the pallets did not have an immediate effect on the crops being cleaned during the process. Rather, the pallets were used to support the bins so Taxpayer's employees could transport the bins to its storage facility to be shipped to Taxpayer's customers, such as retailers and wholesalers. Taxpayer's production ended when the sorted and cleaned crops were placed into the bins. Taxpayer's use of pallets was post-production and for shipping purposes. The pallets eventually returned to the out-of-state vendor. The Indiana Tax Court has

explained that pallets which are returned to the vendor are considered returnable containers and are subject to tax. *Brambles Industries, Inc., d/b/a Chep USA v. Ind. Dept. of Revenue*, 892 N.E.2d 1287 (Ind. Tax Ct. 2008).

In conclusion, as mentioned earlier, exemptions from sales and use tax would be strictly construed against taxpayer challenging denial of claim for refund regarding sales and use tax. *Graham Creek Farms*, 819 N.E.2d at 155. "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *RCA Corp.*, 310 N.E.2d at 100-01. Given the totality of the circumstances, in the absence of other supporting documentation, the Department is not able to agree that Taxpayer met its burden of proof demonstrating that it paid the tax in question, and it was entitled to the exemption under IC § 6-2.5-5-2.

FINDING

Taxpayer's protest is respectfully denied.

June 22, 2021

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